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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 23 2009

Federal Communications Commission
Office of the Secretary

In the Matter of

Digital Audio Broadcasting Systems
And Their Impact on the Terrestrial
Radio Broadcast Service

MM Docket No. 99-323

99-325

To: The Commission

REQUEST FOR DECLARATORY RULING

Mount Wilson FM Broadcasters, Inc. ("Petitioner"), licensee of FM Broadcast Station KKGQ, Los Angeles, California, pursuant to Section 1.2 of the rules, hereby requests a declaratory ruling regarding a digital multicast programming issue, specifically, whether it is permissible for an in market radio station to multicast the programming of an out of market station and, if so, what impact, if any, does such multicasting have with respect to attributable interests.

1. In its Second Report and Order First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344 (2007) ("Second R&O") in the above-captioned proceeding, the Commission declined to put any limitations on digital audio broadcast ("DAB") multicast programming, stating as follows:

We believe that radio stations can best stimulate consumers' interest in digital audio services if they are able to offer the programs that are the most attractive to their communities. Further, allowing radio stations the flexibility to provide multicast services will allow them to offer a mix of services that can promote increased consumer acceptance of DAB, which, in turn, will likely speed the conversion process. Additionally, diversity of programming services may result from multicasting and provide programming to unserved and underserved segments of the population. We strongly encourage digital audio broadcasters to use their additional channels for local civic and public affairs programming and programming that serves minorities, underserved populations, and non-English speaking communities. 22 FCC Rcd at 10358.

Petitioner requests that the Commission issue a ruling clarifying (and limiting) DAB multicast programming based on the facts and information set forth below.

2. The Los Angeles, California radio market is ranked as the second largest and the Riverside-San Bernardino, California radio market is the twenty-four largest radio market. Viacom, Inc., through its ownership of CBS Television Stations Group and CBS Radio Stations

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Group, has two television stations (KCBS-TV and KCAL-TV) and 7 radio stations (KFWB (AM), KNX (AM), KCBS-FM, KRTH (FM), KTWV (FM), KROQ-FM and KAMP-FM) in the Los Angeles radio market which violates the radio-television cross ownership rule, Section 73.3555 (c), which limits it to 2 television stations and 6 radio stations.¹ Notwithstanding this existing violation of the television-radio cross ownership limits, the HD-3 channel of KTWV, Los Angeles, California, is currently being used to broadcasting the signal of commonly owned station KFRG (FM), San Bernardino, California, licensed to the adjacent Riverside-San Bernardino, California radio market.

3. The Commission has stated that, in the digital multicast context, a licensee who programs more than 15 percent of the total weekly hours broadcast on a digital audio stream of another station in the market will be considered to have an attributable interest in that brokered station. 22 FCC Rcd at 10360. Conversely, does it not logically follow that if a licensee broadcasts the signal of a commonly owned out of market station on a multicast channel of its in market station, then that licensee should be considered to have an additional attributable station in that market as a result of such multicasting? If that is the case, Viacom is exacerbating its existing violation of the radio-television cross ownership rule by broadcasting the programming of KFRG on the HD-3 channel of KTWV, effectively giving it 2 television stations and 8 radio stations in the Los Angeles radio market, a violation which the Commission should immediately order to cease.

4. Secondly, broadcasting an out of market station on a multicast channel of an in market station, will, per se, expand the coverage area of the out of market station to encompass the coverage area of the multicasting station (see the attached predicted coverage contours of KFRG and KTWV--- the KTWV coverage area almost encompasses the KFRG coverage area and is significantly greater than that of KFRG coverage area). Expanding a commonly owned FM station's coverage area through multicasting is essentially indistinguishable from a licensee expanding the coverage area of its station through the use of FM translators which is not permitted under the rules.

5. Section 74.1232 (d) of the rules permits the licensee of a commercial FM station to use an FM translator station only for the purpose of providing fill-in coverage to areas within its protected service contour where reception of its signal is impeded by geographic obstruction and not for the purpose of extending the FM station's contour beyond its protected contour. In adopting this restriction the Commission was concerned about the potentially adverse effects should FM stations expand their service areas into the service areas of other FM stations. Report and Order on FM Translator Rules, 5 FCC Rcd 7212, 7214 (1990).

6. The Commission stated that "the public interest is best served by maximizing [FM] service through the use of FM radio broadcast stations" and that "permitting the expansion

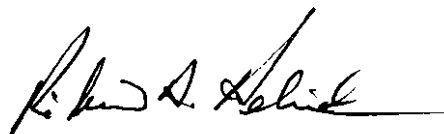
¹ When Viacom acquired its second television station in Los Angeles, KCAL-TV, the Commission granted Viacom a period of six months to divest itself of one of its seven radio stations in order to come into compliance with the radio-television cross-ownership rule in the Los Angeles radio market. Fidelity Television, Inc., 17 FCC Rcd 8567 (2002). On November 15, 2002, an application (File No. BAL-20021115AAH) was filed to assign the license of KFWB (AM) to KFWB License Trust (Bill Clark, Trustee); that application is still pending after approximately seven years past the divestiture date set by the Commission and Viacom, through its CBS Radio Stations Group, continues to operate KFWB in clear violation of the Commission's holding in Fidelity Television, Inc.

of FM service through the use of translators would be inconsistent with our basic FM allocation scheme.” 5 FCC Red at 7215. Expanding FM service through multicasting the signal of an out of market station would similarly be inconsistent with the Commission’s FM allocation scheme and would have adverse consequences on other in market stations and for those reasons should be prohibited.

7. As DAB multicasting becomes more wide-spread other multicasting issues will surely arise. However, the issue raised in the instant request for declaratory ruling is so fundamental (and so egregious) that, if not clarified, it would have the potential of causing severe disruption to the existing FM service which would disserve the public interest. Accordingly, the Commission is requested to issue a ruling that DAB multicasting may not be used for the purpose of expanding the service area of another FM broadcast station, whether commonly owned or independently owned, beyond its protected service area and order Viacom to immediately comply with the radio-television cross ownership limits in the Los Angeles radio market.

Respectfully submitted

MOUNT WILSON FM BROADCASTERS, INC.

By: 

Robert B. Jacobi
Richard A. Helmick

COHN AND MARKS LLP
1920 N Street, N.W.
Suite 300
Washington, D.C. 20036-1622

Its Attorneys

October 23, 2009



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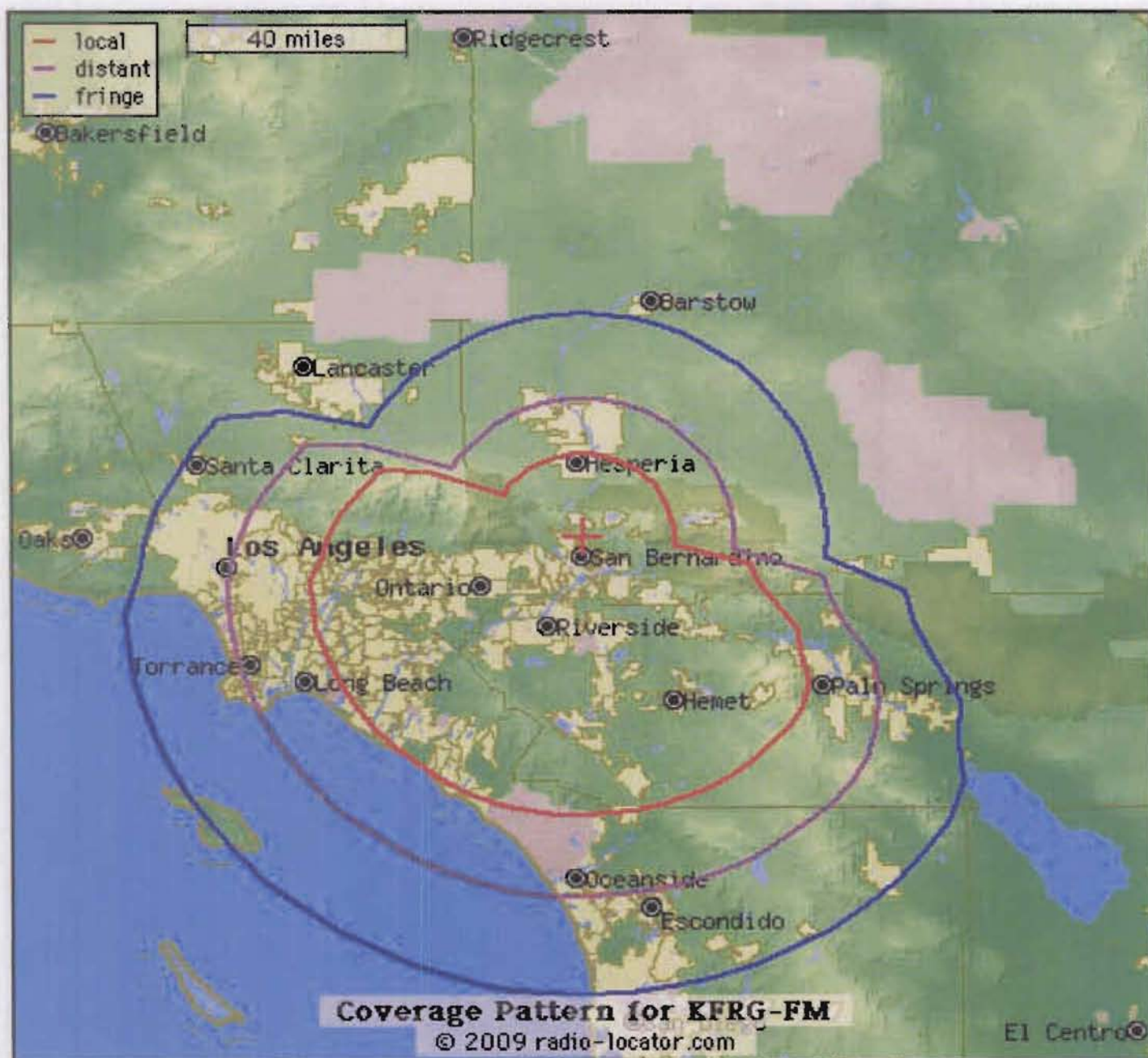
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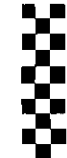
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STATEMENT OF SAUL LEVINE

I, Saul Levine, hereby state as follows under penalty of perjury:

1. I am the President of Mount Wilson FM Broadcasters, Inc., Licensee of KKGO, Los Angeles, California.
2. I have read the foregoing Request for Declaratory Ruling and the facts set forth therein are, to my knowledge, information and belief, true and correct.


Saul Levine

CERTIFICATE OF SERVICE

I, Monica C. King, hereby certify that on October 23, 2009, a copy of the foregoing "Request for Declaratory Ruling" was sent by First Class mail, postage prepaid, to the following:

Honorable Julius Genachowski, Chairman*
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Honorable Michael J. Copps, Commissioner*
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

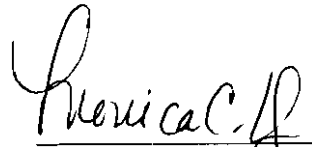
Honorable Robert M. McDowell, Commissioner*
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Honorable Mignon Clyburn, Commissioner*
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Honorable Meredith Attwell Baker, Commissioner*
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Peter H. Doyle, Chief*
Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 2-A267
Washington, D.C. 20554

CBS Radio East, Inc.
2175 K Street, N.W., Suite 350
Washington, D.C. 20037-1843
Licensee of KTWV



Monica C. King

*Via Hand Delivery